

REMARKS

In the Office Action dated November 25, 2008, claims 1-18 were rejected. Claims 1, 12, 13 and 15 have been amended and claims 111-114 added in this application. Applicants respectfully submit that no new matter has been added and support for the amendments is found at least at paragraphs [0024], [0065], [0077], [0099], [0133], [0171] and [0172] of the specification. Upon entry of this amendment, claims 1-18 and 111-114 are pending and at issue.

DOUBLE PATENTING CLAIM REJECTIONS

Claims 1, 2, 3 and 8-10

The Examiner has provisionally rejected claims 1, 2, 3 and 8-10 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-10, 13-16, 41, 42, 45 and 49-51, 53-59, 62 and 72-74 of co-pending U.S. Application No. 11/258,598. Claim 1 has further been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 19-23 of co-pending U.S. Application No. 10/493,874.

Applicants respectfully submit that because no allowable subject matter has been indicated in any of the pending applications at issue, any action by Applicants or the Examiner with regard to the filing of a terminal disclaimer is premature. Accordingly, reconsideration of the Examiner's provisional rejection of claims 1, 2, 3 and 8-10 on the ground of nonstatutory obviousness-type double patenting is respectfully requested.

Claims 1, 3, 5, 6, 7 and 12

The Examiner has rejected claims 1, 3, 5, 6, 7 and 12 on the ground of nonstatutory obviousness-type double patenting over claims 1, 2, 51, 52, 53, 56, 57, 61-67, 69 and 79 of U.S. Patent No. 6,997,863. Applicants respectfully traverse the Examiner's rejections.

Applicants submit that U.S. Patent No. 6,997,863 is directed to single-domain magnetic particles attached to target-specific ligands (abstract; col. 4, lns. 29-30; col. 12, lns. 12-16), whereas the present invention is directed more broadly to a system that encompasses a wide range of particles including, but not limited to, targeted and untargeted particles (para. [0024], [0065], [0077], [0171], [0172]), single and multidomain magnetic particles (para. [0024], [0099]-

[0101], [0109]), and susceptors and bioprobes (para. [0024], [0065], [0077], [0171], [0172]). Claims 1, 12, 13 and 15 have been amended and claims 111-114 added to further highlight the differences between the present application and U.S. Patent No. 6,997,863. In particular, dependent claim 111 is directed to a system according to claim 1, wherein the susceptor comprises a single-domain magnetic particle. Support for new dependent claim 111 is found at least at paragraphs [0024], [0099]-[0101], and [0109] of the specification. In addition, dependent claim 112 is directed to the system according to claim 1, wherein the susceptor comprises a multidomain magnetic particle. Support for new dependent claim 112 is found at least at paragraphs [0099]-[0101] and [0109] of the specification. Applicants respectfully submit that no new matter has been added by way of this amendment. Accordingly, reconsideration and withdrawal of the Examiner's rejection on the ground of nonstatutory obviousness-type double patenting are respectfully requested.

Claims 1 and 2

Claims 1 and 2 stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 51-54, 57 and 58 of U.S. Patent No. 7,074,175. Applicants respectfully traverse the Examiner's rejections.

Applicants respectfully submit that U.S. Patent No. 7,074,175 is directed to compositions comprising single-domain magnetic particles and target-specific ligands (col. 1, lns. 47-50; col. 5, lns. 1-7). The present invention is more broadly directed to a system that encompasses a wide range of particles including, but not limited to, targeted and untargeted particles (para. [0024], [0065], [0077], [0171], [0172]), single and multidomain magnetic particles (para. [0024], [0099]-[0101], [0109]), and susceptors and bioprobes (para. [0024], [0065], [0077], [0171], [0172]). Claims 1, 12, 13 and 15 have been amended and claims 111-114 added to further highlight the differences between the present application and U.S. Patent No. 7,074,175. In particular, dependent claim 111 is directed to a system according to claim 1, wherein the susceptor comprises a single-domain magnetic particle. Support for new dependent claim 111 is found at least at paragraphs [0024], [0099]-[0101], and [0109] of the specification. In addition, dependent claim 112 is directed to the system according to claim 1, wherein the susceptor comprises a multidomain magnetic particle. Support for new dependent claim 112 is found at least at paragraphs [0099]-[0101] and [0109] of the specification. Applicants

respectfully submit that no new matter has been added by way of this amendment. Accordingly, reconsideration and withdrawal of the Examiner's rejection on the ground of nonstatutory obviousness-type double patenting are respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 2, 12-15, 16, 17 and 18

Claims 1, 2, 12-15, 16, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,167,313 to Gray et al. ("Gray") in view of U.S. Patent No. 4,979,518 Itoh et al. ("Itoh"). Applicants respectfully traverse the Examiner's rejections.

Amended independent claim 1 is nonobvious over Gray in view of Itoh because the cited references fail to teach or suggest each and every limitation of claim 1. Specifically, the combination of Gray and Itoh fails to teach or suggest, among other things, a thermotherapy system comprising an apparatus that monitors a magnetic property of the energized susceptor during treatment, as disclosed in amended independent claim 1. See MPEP § 2143 (stating that one of the elements of a prima facie case of obviousness under §103(a) is that the prior art references teach or suggest all of the claim limitations).

Gray discloses a method for site specific treatment comprising delivering microcapsules loaded with ferromagnetic materials to diseased tissue in a patient and exposing the magnetic material in the patient to a linear alternating magnetic field to generate hysteresis heat in the diseased tissue. (col. 2-3, lns. 66, 1-13; col. 5, lns. 47-48; col. 10, lns. 24-25). Gray fails to disclose an apparatus that monitors a magnetic property of the energized susceptor during treatment, as disclosed in amended independent claim 1.

Itoh does not resolve the deficiencies of Gray. Itoh is directed to a body depth heating hyperthermal apparatus comprising a hollow tube insertable into a body cavity. The tube is formed of a heat generating substance, such as a mixture of iron powder and a metallic acid salt. (abstract; col. 11, lns 14-17). Itoh fails to disclose an apparatus that monitors a magnetic property of the energized susceptor during treatment, as disclosed in amended independent claim 1. Therefore, claim 1 is nonobvious over Gray in view of Itoh because the cited references fail to teach or suggest each and every limitation of amended independent claim 1.

For at least the reasons set forth above, amended independent claim 1 is nonobvious over Gray in view of Itoh. Because claims 2, 12-15, 16, 17 and 18 depend from and incorporate all of the limitations of amended independent claim 1, claims 2, 12-15, 16, 17 and 18 are nonobvious over Gray in view of Itoh. See MPEP § 2143.03 (stating that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious). Accordingly, Applicants respectfully request withdrawal of the Examiner's rejections and reconsideration of claims 1, 2, 12-15, 16, 17 and 18.

Claims 3, 4, 8, 9, 10 and 11

Claims 3, 4, 8, 9, 10 and 11 stand rejected as allegedly obvious over Gray in view of Itoh further in view of U.S. Patent Application Publication 2005/0151438, now U.S. Patent No. 7,239,061, to Huang et al. ("Huang"). Because claims 3, 4, 8, 9, 10 and 11 either directly or indirectly depend from and add further limitations to amended independent claim 1, such claims are allowable for at least the same reasons as amended independent claim 1. Accordingly, withdrawal of the Examiner's rejections of claims 3, 4, 8, 9, 10 and 11 and reconsideration of such claims are respectfully requested.

Claims 5, 6 and 7

Claims 5, 6 and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Gray in view of Itoh further in view of U.S. Patent No. 6,477,398 to Mills ("Mills"). Because claims 5, 6 and 7 either directly or indirectly depend from and add further limitations to amended independent claim 1, claims 5, 6 and 7 are allowable for at least the same reasons. Accordingly, withdrawal of the Examiner's rejection under 35 U.S.C. § 103(a) and reconsideration of claims 5, 6 and 7 are respectfully requested.

Claim 12

Claim 12 currently stands rejected as allegedly unpatentable over Gray in view of Itoh further in view of U.S. Patent Application Publication 2003/0032995, now U.S. Patent No. 6,997,863, to Handy et al. ("Handy"). Claim 12 depends from and further limits amended independent claim 1 and, as such, is allowable for at least the same reasons as amended independent claim 1. Accordingly, withdrawal of the Examiner's rejection under 35 U.S.C. § 103(a) and reconsideration of claim 12 is respectfully requested.

CONCLUSION


For at least the foregoing reasons, the claims at issue are patentable over the cited art. Therefore, reconsideration and allowance of all claims at issue are respectfully requested. Should the Examiner have any questions or comments, or need additional information to expedite prosecution of this application, she is invited to contact the undersigned at her convenience.

DEPOSIT ACCOUNT AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for this submission, or credit any overpayment, to Deposit Account No. 50-0436.

Respectfully submitted,

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